

### REMARKS

Claims 1, 4, 7-9, 16-20, 23-25, 27-28 and 38 are pending upon entry of the present amendments. Claims 2, 3, 5, 6, 21, 22 and 26 have been canceled without prejudice; and claims 10-15 and 29-37 have been withdrawn. New claim 38 has been added, which is supported in the specification at pages 15-34. The amendments do not contain new matter.

#### Rejoinder of Claims 10-15

Applicant respectfully submits that claims 10-15 properly fall within the elected invention (i.e., Group I, claims 1-28) and requests rejoinder of claims 10-15. According to the MPEP, a species election is made **for search purposes only**. Upon allowance of a generic claim, Applicant is entitled to consideration of claims to additional species or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141. See, MPEP § 809.02(c).

Furthermore, where claims can be examined together without undue burden, the Examiner must examine the claims on the merits even though they are directed to independent and distinct inventions. See, MPEP § 803.01. To establish that an “undue burden” would exist, the Examiner must show that examination of the claims would involve substantially different prior art searches, making examination burdensome. However, claims 10-15 share the same core structure as Formula I, where X is -OC(=O)-, -NR<sup>24</sup>C(=O)- and -S(=O)<sub>2</sub>- and R<sup>24</sup> is H or C<sub>1-6</sub> alkyl. Therefore, no undue burden exists to examine all the claims together.

In view of the above, Applicant respectfully submits that withdrawn claims 10-15 be examined together with claims 1, 4, 7-9, 16-20, 23-25, 27-28 and 38.

#### Claim Objections

Claims 1, 4, 7-9, 16-20 and 23-28 are objected to as allegedly containing non-elected subject matter. Claim 26 has been canceled without prejudice, rendering this objection moot as to this claim. Claims 9, 18, 20 and 24 are also objected to because of informalities.

To expedite prosecution without acquiescing to the Office’s further restriction of non-elected species, claims 1, 4, 7-9, 16-20, 23-25 and 27-28 have been amended to exclude heterocyclic and heteroaryl R<sup>1</sup> substituents, and to correct informalities. Thus, Applicant requests that the claim objections be withdrawn.

Rejections under 35 U.S.C. § 112

Claims 1, 4, 7-9, 16-20 and 23-28 were rejected under 35 U.S.C. § 112, first paragraph. The claims have been amended to delete the objected terms. Accordingly, the claims are enabled.

Claims 26 and 28 were also rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. Claim 26 has been canceled, rendering this rejection moot as to this claim. New claim 38 covers specific compounds falling within claim 1, and is definite. As amended, claim 28 depends upon new claim 38, and is definite. Thus, Applicant respectfully requests that this rejection be withdrawn.

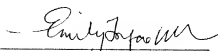
Conclusion

In summary, the claims have been amended to obviate the rejections, and Applicant requests that claims 1, 4, 7-9, 16-20, 23-25, 27-28 and 38 be passed to issue. Once the product claims are found allowable, withdrawn method claims 29-37, which are commensurate in scope with the allowed product claims must be rejoined (M.P.E.P. § 821.04).

If a telephone conference would expedite prosecution of this application, please telephone the undersigned attorney at (858) 812-1539. **Prior to issuance of a final Office Action, the undersigned respectfully requests a telephonic interview with the Examiner.**

In the event that the Patent Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 50-1885 referencing docket No. P1095US10.

Respectfully submitted,

  
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